



**MINUTES  
SCOTTSDALE PLANNING COMMISSION  
KIVA – CITY HALL  
3939 N. DRINKWATER BOULEVARD  
MARCH 13, 2002**

**PRESENT:** Chuck Lotzar, Vice Chairman  
Betty Drake, Commissioner  
Kay Henry, Commissioner  
Tony Nelssen, Commissioner  
Kevin Osterman, Commissioner

**ABSENT:** David Gulino, Chairman  
Margaret Dunn, Commissioner

**STAFF:** Donna Bronski  
John Chase  
Kurt Jones  
Jerry Stabley  
Burns Gutzwiller  
Jason Yaich

**CALL TO ORDER**

The regular meeting of the Scottsdale Planning Commission was called to order by Vice Chairman Lotzar at 5:00 p.m.

**ROLL CALL**

A formal roll call confirmed members present as stated above.

**OPENING STATEMENT**

**COMMISSIONER OSTERMAN** read the opening statement, which describes the role of the Planning Commission and the procedures used in conducting this meeting.

**MINUTES APPROVAL**

1. February 27, 2002

**COMMISSIONER HENRY** requested a correction to the February 27, 2002 minutes. On page 2 under Expedited Agenda, it reads: "There are not items on the expedited agenda". It should read: "There were no items on the expedited agenda".

**COMMISSIONER OSTERMAN MADE A MOTION TO APPROVE THE FEBRUARY 27, 2002 MINUTES AS AMENDED. SECONDED BY COMMISSIONER DRAKE.**

**THE MOTION PASSED BY A VOTE OF FIVE (5) TO ZERO (0).**

**EXPEDITED AGENDA**

2. 1-AB-2002 (Aquila at McDowell Mountain Ranch) - request by George F Tibsherany Development Corp, applicant, George F. Tibsherany & Roger Hoover, owners, to abandon Government Land Office (GLO) roadway easements on property located at south side of Bell Rd between 98th Street & 100th Street.

(PULLED TO REGULAR AGENDA)

3. 2-AB-2002 (Horseman's East Forty) - request by Horseman's Park East, applicant, Multiple Owners, to abandon Government Land Office (GLO) roadway easements on property located south of Bell Road between 98<sup>th</sup> Street & 100th Street.

(PULLED TO REGULAR AGENDA)

4. 2-UP-2002 (Superpumper/ Car Wash Addition) - request by K Engineering & Design, applicant, Partners Forever LLC, owner, for a conditional use permit to add a car wash to an existing gasoline service station facility located at 8990 E. Shea Boulevard, on a 1± acre parcel with Central Business District (C-2) zoning.

(PULLED TO REGULAR AGENDA)

5. 1-MP-2002 (Park at DC Ranch Master Site Plan) - request by Biskind, Hunt & Taylor, applicant, DC Ranch LLC, owner, for Master Site Plan approval for park at DC Ranch on an 8.25± acre parcel located at the southeast corner of Thompson Peak Parkway and Desert Camp Drive, with Open Space (O-S) zoning.

**VICE CHAIRMAN LOTZAR** stated during the study session decisions were made to move cases 10-AB-2002, 2-AB-2002 and 2-UP-2002 to the regular agenda.

**MR. JONES** presented case 1-MP-2002 as per the project coordination packet. He stated there has been an update to the report that the Parks Department would be designing this year into next

year and construction next year into the following year. Staff recommends approval subject to the attached stipulations.

**COMMISSIONER DRAKE MOVED TO FORWARD CASE 1-MP-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECONDED BY COMMISSIONER NELSEN.**

**THE MOTION PASSED BY A VOTE OF FIVE (5) TO ZERO (0).**

**REGULAR AGENDA**

2. 1-AB-2002 (Aquila at McDowell Mountain Ranch) - request by George F Tibsherany Development Corp, applicant, George F. Tibsherany & Roger Hoover, owners, to abandon Government Land Office (GLO) roadway easements on property located at south side of Bell Rd between 98th Street & 100th Street.
3. 2-AB-2002 (Horseman's East Forty) - request by Horseman's Park East, applicant, Multiple Owners, to abandon Government Land Office (GLO) roadway easements on property located south of Bell Road between 98<sup>th</sup> Street & 100th Street.

**MR. GUTZWILLER** presented cases 1-AB-2002 and 2-AB-2002 as per the project coordination packet. Staff recommends approval of 1-AB-2002 subject to the dedication of a 30-foot wide half street dedication for 100<sup>th</sup> Street. These dedications have been received and will be recorded if the abandonment is approved.

Staff recommends approval of 2-AB-2002 subject to the City Council approval of the Horseman's East Forty final plat, which includes that the following stipulations be satisfied.

Dedication of a 45 feet wide half-street right-of-way for 98<sup>th</sup> Street.

Dedication of a 30 feet wide half-street right-of-way for 100<sup>th</sup> Street.

Reservation of a 15 feet wide public utility easement over the south 15 feet of the north 33 feet wide GLO easement located across lots 18 and 20.

**COMMISSIONER HENRY** expressed her concern regarding the conceptual plan. She stated she felt that the Planning Commission's recommendation should be parallel to the Development Review Board's recommendation on roadways, otherwise the Planning Commission is recommending abandonment on whatever. **MR. GUTZWILLER** stated that City staff does review the final plat but if any significant changes are to be made it must be returned to the DRB. **JOHN CHASE**, Quality Compliance Director, reviewed the final plat process. He stated after the Development Review Board has approved the final plat process any significant changes to those improvement plans would require the abandonment to go back through the process.

**COMMISSIONER NELSEN** expressed his concerns regarding the appropriateness of reviewing GLO roadway easements. He stated what is happening in Scottsdale, which started slow and but become a trend, is the loss of equestrian property. He further stated that he is

wondering what the City is doing here. This is a major change and this does lie close to WestWorld, which is the major horse facility in the City of Scottsdale.

Commissioner Nelssen stated that the resolution adopted by the City of Scottsdale allows the City of Scottsdale to abandon their interest as well as any public utility. It is very specific it speaks to public utilities it does not refer to public roads.

Commissioner Nelssen stated that he and his wife were able to ride their mules to the polling place yesterday to vote. The only reason they could do that was because they had benefit of access over GLO easements in their neighborhood. He further stated that he felt the Commissioners need to look at the future ramifications. There are not a lot of trails in these areas because there is no place for the trails. There is not access to these trails because the City has abandoned their rights.

Commissioner Nelssen stated he would like go on record that he has a letter for Maricopa County Assistance Chief Counsel stating her opinion was that she has never seen a way of extinguishing these easements that would protect everyone's interests. He further stated that the Attorney for Planning Development in Maricopa County has stated that they do not grant building permits in easements. Also the Director of the Planning Department for Maricopa County has stated they do not issue building permits in any easements specifically GLO easements. He commented that he felt the City should get on the same page and not grant building permits on top of those easements.

**VICE CHAIR LOTZAR** stated at the Commission's prior meeting they asked through a resolution that they receive direction from the City Council with respect to GLO easement issues. As was stated earlier, the Planning Commission sits as an advisory board to the City Council, and as such, the Planning Commission does not have the ability to control Council. To date, the Council has not responded. The Commission has received a response from the City Attorney whom indicated his preference not to take the issue any further with the Board. The City Attorney views his client as the City Council and the City Council has the power to take legal action. He added that as a practicing lawyer that seems like a reasonable approach.

**MR. GUTSWILLER** stated both of these properties have been before the City Council when they were rezoned and they have agreed informally to what is beingproposed.

**COMMISSIONER NELSEN** stated a month ago this issue came up and the Commission requested legal staff to ask City Council if they were willing to share that information. To date they have not received that information. He further stated he has spoken with several council members and they have not been asked that question. The City Attorney has stated he would recommend that the City Council not share that advice with the Planning Commission.

**VICE CHAIRMAN LOTZAR** stated as an advisory board the Planning Commission is doing its best to make decisions with the information presented to them. He further stated he would hope Commissioner Nelssen's comments are included in both cases minutes.

**COMMISSIONER DRAKE** stated the Planning Commission is an advisory board to the Council, but at the same time is obligated to do its homework to the best of its ability. If Council is expected to take Commission recommendations seriously, the Commission needs to make informed recommendations. She further stated that she is concerned the Commission has asked for feedback and they have not received it. She has heard from council members that they were never approached with the fact that the Commission is concerned about this issue. There are some very specific concerns and issues raised related to how GLO abandonments are treated differently in the County. She added that she felt the Commission is operating with limited information, which weakens its position.

**MS. BRONSKI** apologized if the City Attorney's response to the Planning Commission seemed less than acceptable. There was no attempt to hide anything from the City Council. The City Council was copied with the same letter the Planning Commission received and are well aware of the situation. This issue has been discussed frequently with the City Council. The City Council has determined that these items should be processed by the staff on a case by case basis and the City Council would determine whether in any particular case if they should abandon it or not. The instruction is to proceed as if they are valid and the City Council will make the ultimate decision.

**COMMISSIONER DRAKE** stated that maybe the Commission should not make a recommendation to City Council. Perhaps it should pass with a vote of "no recommendation" if the Council alone had the information to make an informed decision. She further stated that she agrees with Commission Nelssen regarding saving the horse properties. She stated strictly as a political statement that has nothing to do with this case, she wishes the Council would save some of the horse properties while there is still time.

**MS. BRONSKI** stated the City Attorney's office has opined that the City may abandon GLO Easements.

**COMMISSIONER NELSEN** stated that the Commission has not received an answer from City Council whether they feel it is appropriate for Council to share that information. The City Attorney has indicated that he felt it was not appropriate. He further stated that he would still like to receive that information.

**COMMISSIONER DRAKE** stated if any of the Council members are watching this at home this is an issue that the Commission is very interested in.

**COMMISSIONER HENRY** inquired what would happen in the future if they wanted abandonment's back. **MS. BRONSKI** stated that once they are abandoned they are gone. The City is under no duty to abandon them in the first place.

**COMMISSIONER NELSEN** stated that he has drafted indemnification language with the help of Ms. Bronski as stated below:

Draft stipulation:

Developer agrees to indemnify, defend and hold City harmless from any and all liabilities, claims, losses, costs, damages and expenses, including but not limited to court costs and attorneys' fees, which may be incurred by the City in any action related to the City's abandonment of the City's interest in the Government Land Office patent easement recorded in the Maricopa County Recorder's Office in document number \_\_\_\_\_.

**COMMISSIONER NELSEN** stated this language applies to the process. It could be checked off in the application process in an abandonment or something that could be agreed to afterward. This language puts the property owner and developer on notice that there is an issue that a private property owner in an adjoining property may or may not take them to court. He added he is of the opinion that the easements do not go away they do exist and there are private property interest and the beneficiary interest of access should be consider a private property right. Those easements were dedicated to the private property owner and they are meant to last in perpetuity.

(VICE CHAIRMAN LOTZAR OPENED PUBLIC TESTIMONY ON CASE 1-AB-2002.)

**LYLE WURTZ**, 6510 E., Palm Lane, stated that all boards and commissions need to address the growth issues and bad side effects. He further stated that he felt the Commission should deny these two requests for abandonments. He stated for the record he would like to read a letter from Andy Kunasek, Office of the Chairman, Board of Supervisors addressed to T.R. Nissle. The letter indicates that patent easements present a problem for all involved. The letter stated that the County cannot issue a permit within an easement. It must first be abandoned. The County can only abandon County easements and they cannot abandon paten easements, which were created by the federal government. According to the County Attorney, the federal legislation creating these patent easements failed to provide for their abandonment. Consequently, you are in a Catch -22 and so are the BLM and the local jurisdiction in which the patent easements exists. As long as the patent easement exists, they cannot certify that building a fence within the easement is permissible by law.

**LEON SPIRO**, 7814 E. Oberlin Way, inquired if the plat for this parcel had been approved. He discussed the small tract act of 1938. He also inquired if these roadways can be abandoned. At the last meeting legal counsel stated that information could not be told to the citizens of Scottsdale. He noted that he has never received a tape of the last Planning Commission meeting. He asked if this would adversely affect the City ordinance with respect to the size of a block. He further asked whether or not if they allow for building permits to be issued on land where easements have been abandoned.

(VICE CHAIRMAN LOTZAR CLOSED PUBLIC TESTIMONY ON CASE 1-AB-2002.)

**MR. GUTZWILLER** stated the applicant has submitted a DR application for the Horseman's East Forty but he was unaware of when it would appear before the DR. He further stated regarding the block links there are 10 individual lots and there has not been a lot tie to create a single large block. It does not exceed any ordinance requirement.

**COMMISSIONER HENRY** stated the report indicates that they received DR approval on February 7<sup>th</sup>. **MR. GUTZWILLER** stated the northern one has been approved but he was referring to the Horseman's East Forty.

**MR. STABLEY** reminded the Commission that both of these cases came through as rezoning cases so they did look at both of these cases.

**MR. CHASE** stated regarding the question Mr. Spiro asked about the length of the block that question does not directly apply to this situation.

**COMMISSIONER NELSEN** requested that they put Mr. Spiro's graphic pertaining to Small Tract Act back on the ELMO screen because he felt there was something that was germane. It states: To have and hold the same together with all the rights communities appurtenances belonging to the said claimant. Commissioner Nelsen stated the claimant in this case is the property owner. He inquired if these easements have not been dedicated to the City of Scottsdale what rights does the City have to abandon.

**MR. CHASE** presented information on the two-step process. The first step is the approval stage. During the approval stage none of these GLO easements are being demised, set aside or wiped out. Those easements remain in affect until such time as the plat is approved by City Council after the improvement plans have been through preliminary approval, DR Board and final plan approval. The GLO easement would remain on the site until that resolution is adopted. He discussed the benefits of the two-step process.

**COMMISSIONER OSTERMAN** stated after reviewing the material that has been provided to the Commission over the last couple of months, including the letter from the City Attorney, and hearing the comments by Ms. Bronski, he stated he is in complete agreement with counsel. He understands their rationale for not wanting to go into any depth as far as providing legal guidance to the Commission. He felt that the proposed abandonment does meet the guidelines as presented.

**COMMISSIONER HENRY** stating after reviewing the site plan for 1-AB-2002 based on transportation and getting into the site, she does not have a problem with abandonment. She further stated that the Commission has approved the zoning and the central abandonment is planned for open space, which is very good for the site. Based on the site plan and the presented access to the site and with no public utilities she does not have a problem with the plan. She stated she would support the case.

**COMMISSIONER DRAKE** stated she would support this case. She further stated she would be more comfortable if they included Commissioner Nelsen's indemnification stipulation.

**VICE CHAIRMAN LOTZAR** inquired if adding the indemnification language would be appropriate. **MS. BRONSKI** reiterated that the City Attorney's Office believes that is beyond

the Commission's jurisdiction, but the Commission can make that recommendation to the City Council.

**COMMISSIONER DRAKE** stated this would not be the first time the Commission has recommended a stipulation that is not strictly enforceable. **MS. BRONSKI** stated that all stipulations are voluntary and must be agreed to by the applicant.

**COMMISSIONER NELSEN** stated that he would not be supporting this case for all of the reasons he has mentioned this evening.

**VICE CHAIRMAN LOTZAR** stated he felt it is important to note that in our system it is okay to disagree. He further stated he felt the City has been well served by having a number of vigilant people who have come back to this issue with various levels of detail, time after time to try and make their voice heard, which is good. One of the things that he felt is fair of all legal counsel, especially in Arizona, that there are a lot of answers to questions that just doesn't exist until the Court decide. To the extent they have to give legal counsel some leeway on those issues because of the potential appearance that a Court will ultimately decide them. He felt it is appropriate and he did not see a reason to tie the City's Counsel's hands. He noted at some level through vigilance they made it clear that they needed some additional input. The record is clear as far as that goes. He would encourage the development especially in light of the fact, they have already approved the zoning in the past and that they are making a recommendation in an advisory capacity

**COMMISSIONER OSTERMAN MOVED TO FORWARD CASE 1-AB-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL WITH THE FOLLOWING STIPULATION:**

**DEVELOPER AGREES TO INDEMNIFY, DEFEND AND HOLD CITY HARMLESS FROM ANY AND ALL LIABILITIES, CLAIMS, LOSSES, COSTS, DAMAGES AND EXPENSES, INCLUDING BUT NOT LIMITED TO COURT COSTS AND ATTORNEYS' FEES, WHICH MAY BE INCURRED BY CITY IN ANY ACTION RELATED TO CITY'S ABANDONMENT OF THE CITY'S INTEREST IN THE GOVERNMENT LAND OFFICE PATENT EASEMENT RECORDED IN MARICOPA COUNTY RECORDER'S OFFICE IN DOCUMENT NUMBER \_\_\_\_\_.**

**SECONDED BY COMMISSIONER HENRY.**

**COMMISSIONER NELSEN** stated maybe that language could be made as a change on the application form as opposed to a stipulation on every case.

**THE MOTION PASSED BY A VOTE OF FOUR (4) TO ONE (1) WITH COMMISSIONER NELSEN DISSENTING.**



**VICE CHAIRMAN LOTZAR** inquired if there were any questions for the applicant regarding case 2-AB-2002.

**COMMISSIONER NELSEN** inquired if there would be equestrian privileges on this part of the property.

**DAVID SLOGAR**, applicant, stated he did not believe so.

(VICE CHAIRMAN LOTZAR OPENED PUBLIC TESTIMONY ON CASE 2-AB-2002.)

**VICE CHAIRMAN LOTZAR** inquired if Mr. Wurtz would like to have his prior comments from Case 1-AB-2002 added to this case as well and they would have equal force and affect. **MR. WURTZ** replied in the affirmative.

**VICE CHAIRMAN LOTZAR** inquired if Mr. Spiro would like to have his prior comments from Case 1-AB-2002 added to this case as well and they would have equal force and affect. **MR. SPIRO** replied in the affirmative.

**LEON SPIRO**, 7814 E. Oberlin Way, inquired if the City has the right to abandon these GLO easements. He stated it has been known for a long time that there is probably a private property right involved with these GLO easements. He further stated that most people are only interested in horse people but he is interested in the kids so they would not be jumping fence like the incident that happened in Chandler when a youngster jumped a fence and was shot in the head and died. He read a statement that was made at a congressional hearing back in 1957. He noted that these easements were not meant to be abandoned. There is a need to have public circulation and trails.

(VICE CHAIRMAN LOTZAR CLOSED PUBLIC TESTIMONY ON CASE 2-AB-2002.)

**COMMISSIONER OSTERMAN** stated that this abandonment meets the guidelines as presented.

**COMMISSIONER OSTERMAN MOVED TO FORWARD CASE 2-AB-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL WITH THE FOLLOWING STIPULATION:**

**DEVELOPER AGREES TO INDEMNIFY, DEFEND AND HOLD CITY HARMLESS FROM ANY AND ALL LIABILITIES, CLAIMS, LOSSES, COSTS, DAMAGES AND EXPENSES, INCLUDING BUT NOT LIMITED TO COURT COSTS AND ATTORNEYS' FEES, WHICH MAY BE INCURRED BY CITY IN ANY ACTION RELATED TO CITY'S ABANDONMENT OF THE CITY'S INTEREST IN THE GOVERNMENT LAND OFFICE PATENT EASEMENT RECORDED IN MARICOPA COUNTY RECORDER'S OFFICE IN DOCUMENT NUMBER \_\_\_\_\_.**

**SECONDED BY COMMISSIONER DRAKE.**

**COMMISSIONER DRAKE** stated that she felt Mr. Spiro does raise a good point regarding pedestrian circulation and the real need to develop a local trails system. She further stated there is a consultant working on a citywide trails system. Trails are an important element of the character area studies. There is a need to develop a linked system of pedestrian walkways that connect to trails. She added access to schools should be a priority within that planning.

**COMMISSIONER NELSEN** stated he would like the comments he made on Case 1-AB-2002 added to this case as well. He further stated that private property rights are the foundation of our constitution. He added that he felt the City has mistakenly interpreted access rights through GLO land patent easements. He noted that he felt the beneficiary interests are the surrounding property owners. He further noted that he has been through the abandonment process and he cannot keep his neighbors legally off of his GLO easement. They have the right to egress and ingress on his property.

**COMMISSIONER HENRY** stated that she does not have a problem with the site plan as proposed. If something were to be drastically changed it would come back before the Commission. She read the Community Impact section of the staff report that states: If abandoned, the public would lose the ability to utilize these easements for pedestrian and vehicular traffic. However, the abandonment of these easements allows for the developer to design a street system for the proposed Horseman's East Forty subdivision that limits the number of wash crossings and promotes the city's desire to better preserve these washes as Natural Area Open Space easements. She noted that she felt this was a plus and would be supporting this case.

**COMMISSIONER NELSEN** stated in general when preserving our washes we include trails in them.

**VICE CHAIRMAN LOTZAR** stated he reiterates his comments on case 1-AB-2002: He stated that he felt it is important to note that in our system it is okay to disagree. He further stated he felt the City has been well served by having a number of vigilant people who have come back to this issue with various levels of detail time after time to try and make their voice heard, which is good. One of the things that he felt is fair of all legal counsel, especially in Arizona, that there are a lot of answers to questions that just don't exist until the Court decide. To the extent, they have to give legal counsel some leeway on those issues because of the potential appearance that a Court will ultimately decide them. He felt that it is appropriate and he did not see a reason to tie the City's Counsel's hands. He noted that at some level through vigilance they made it clear that they needed some additional input. The record is clear as far as that goes. He would encourage the development especially in light of the fact they have already approved the zoning in the past and that they are making a recommendation in an advisory capacity.

He stated that he is very sympathetic to the trails issue. It appears the trails issue is getting more weight from the City Council. The sooner we can address the trails issue he felt that everyone would feel better. He further stated that he does support this case.

**THE MOTION PASSED BY A VOTE OF FOUR (4) TO ONE (1) WITH COMMISSIONER NELSEN DISSENTING.**

4. 2-UP-2002 (Superpumper/ Car Wash Addition) - request by K Engineering & Design, applicant, Partners Forever LLC, owner, for a conditional use permit to add a car wash to an existing gasoline service station facility located at 8990 E. Shea Boulevard, on a 1± acre parcel with Central Business District (C-2) zoning.

**MR. YAICH** presented this case as per the project coordination packet. Staff supports the applicant's request subject to the attached stipulations.

**COMMISSIONER NELSEN** stated it appears as cars exit the bay there is potential for conflicts with other cars entering and exiting the service station even with the deceleration lane.

**MR. YAICH** stated staff has looked at the site circulation focusing on the exit of the car wash and they do have a concern about that but felt it could be resolved through the design review process. He further stated staff would welcome any suggestions on how to mitigate any potential conflicts.

**COMMISSIONER NELSEN** inquired about where the cars were suppose to go when they are done. He suggested perhaps it could be moved back a little and instead of exiting on Shea, they could exit on 90<sup>th</sup> Street.

**COMMISSIONER DRAKE** inquired if staff prepared the circulation map. **MR. YAICH** stated the applicant prepared it.

**KEVIN TAYLOR**, District Manager for Superpumper, stated most drive through facilities are setup to enter the structure making a left-hand turn because it is an easier process for the driver for visibility. He further stated they could not move it to the north because of the tank pad that contains all of their product supply and due to other constraints of the property. He discussed the traffic flow on the property. He noted with regard to the deceleration lane there is a 50-foot scenic corridor which provides for stacking.

**COMMISSIONER NELSEN** stated just to clarify he was not suggesting the applicant move the whole facility to the north of the property but rather just to move it a little. He further stated he felt when you need the most visibility is when you exit. He added that it has been his experience when there is space people tend to drive a little faster.

**COMMISSIONER DRAKE** inquired why there was a conflict between the circulation plan and the revised preliminary landscape plans. **MR. YAICH** stated the landscape plan is the old plan. He further stated the applicant has to revise and remove the east row of parking.

**COMMISSIONER DRAKE** inquired about the length of the cars on the diagram. **MR. TAYLOR** stated they are standard length car 16 foot. **COMMISSIONER DRAKE** stated there is not a standard length car in north Scottsdale because many people drive pickup trucks and SUVs.

**COMMISSIONER HENRY** stated that many parking lots are busy and they have put stop on the ground or placed a yield sign to give a warning before people go across the entrance.

**COMMISSIONER DRAKE** asked the applicant why he thought they needed a car wash.

**MICHAEL KAPANICAS** presented the Commission with a brief history on his business. He stated their intent was to provide this use as an additional service to their existing customer base, thereby allowing them to remain competitive in the market place of a very competitive industry.

**COMMISSIONER DRAKE** inquired if they had looked at any alternatives to the car wash such as a mini restaurant. **MR. KAPANICAS** stated the site would not warrant any food service. He reminded the Commission that this is not a full service car wash. It is an automatic car wash. He stated the car wash is the service their customers want.

**VICE CHAIRMAN LOTZAR** stated he is predisposed to always let the property owner use the property how they see fit. He further stated he is concerned about where the car wash is located with the traffic. He added he is very concerned especially given the speed of the cars going down Shea Boulevard. He noted there is the possibility that people might try and dry their own cars and the queuing concerns. He further noted he is concerned whether or not there is enough room to afford the applicant the ability to operate successfully like they have in other locations.

**MR. KAPANICAS** stated a car exits about every five minutes. It takes about five minutes to do a car wash. He further stated with a 50-foot scenic corridor and with as wide as the driveway is and with where it is located it also give the driver the opportunity to head to the east and go out the driveway on 90<sup>th</sup> Street. He further stated they would not jeopardize their customers because of the flow of traffic because selling gas is the number one item they sell. They have looked at the safety aspects.

**VICE CHAIRMAN LOTZAR** stated the issue the Commission seems to be struggling with is when you couple the idea of additional screening so you can't see it from the road and the fact there is the buffer already and the limited queuing on the exit side it is a concern. He inquired if there was a boulevard on 90<sup>th</sup> Street. **MR. TAYLOR** replied in the affirmative.

**VICE CHAIRMAN LOTZAR** stated this is a high traffic volume area with significant speeds. **MR. TAYLOR** stated the average speed in front of this facility is not 55 miles per hour it is more like 35 to 40 miles per hour. **VICE CHAIRMAN LOTZAR** stated it is his perception the cars are going by at a higher speed.

**COMMISSIONER DRAKE** stated it appears there is a possible location west of the right-of-way line on 90<sup>th</sup> Street, where there is a large landscape area. She inquired if the applicant had looked at putting it over there. **MR. TAYLOR** stated they did look at that and there is a easement line so they would only pick up 10 feet and that would not be enough to put it there.

**COMMISSIONER NELSEN** inquired about the purpose of the easement. **MR. TAYLOR** stated it is an utility easement for APS.

**COMMISSIONER HENRY** stated based on the traffic impact study it states that three more trips would be going into the site so they looked at the impact of more traffic coming into the site but did not evaluate the site driveways.

**BOB BROWN**, Transportation Department, stated staff looked at the criteria for granting the use permit. He further stated they do not have any criteria for stacking in the ordinance. He noted that the report is in error. The only published standards on trip generation talks about self-service car washes generating six trips per hour. So he multiplied it by a factor of four and came up with 12 vehicles an hour. Stacking for eight seems adequate so there should not be a stacking problem out onto 90<sup>th</sup> Street. He presented information on the internal traffic circulation. He reported that turning movements and conflicts are common in gas stations. He further reported staff thought about requiring a sign that stated to Watch for Turning Vehicles.

**COMMISSIONER DRAKE** inquired if there were any counts on trips generated during peak hours. **MR. BROWN** replied in the negative. **COMMISSIONER DRAKE** inquired if there was a study on pedestrian conflicts. **MR. BROWN** responded that he was not aware of any. **MR. KAPANICUS** stated they are normally busy during the daytime hours. **MR. TAYLOR** reiterated this is a impulse car wash for quick in and out type of service. **MR. KAPANICUS** stated there are three pay phones that are located out on the wall that they would be moving that presented more of a hazardous situation than the cars pulling out every five minutes.

**COMMISSIONER NELSEN** inquired if they would have incentives to use the car wash. **MR. KAPANICUS** stated for the first couple of months they would provide an incentive but after they get use to using the car wash, the incentive would go away.

**COMMISSIONER NELSEN** stated he is sympathetic that it is a competitive business but there seems to be too much going on in this site. He expressed his concerns about the circulation because people with recreation vehicles and work vehicles would be using this facility and it appears to be too cramped. **MR. KAPANICUS** stated this site is huge compared to similar sites in Scottsdale.

**COMMISSIONER HENRY** inquired when the parking was redesigned if they lost parking spaces. **MR. TAYLOR** they did lose some spaces but they still have more spaces than is required by the code. He reminded the Commission that they are here to meet the use permit criteria not the circulation use. **VICE CHAIRMAN LOTZAR** commented that it is important that they stay on task.

**COMMISSIONER OSTERMAN** stated that he is sensitive to the safety concerns expressed by his fellow commissioners. However, the increase in traffic would be marginal. He further stated that it has been his observation that unsafe drivers would find a way to operate their vehicles in an unsafe manner regardless of the safety precautions that are designed on a property. He noted that he would imagine the property owner would be delighted if they generated an average of six

car washes an hour let alone 12. He further noted that it is in the applicant's best interest to ensure safe vehicle operating conditions because they have a lot at stake. He added the Commission's original concern was regarding the gaping maw of an opening and the car wash facing south on Shea. It looks like the landscaping appears to satisfy their original concern. He further added that the request does meet the criteria and he is in support.

**COMMISSIONER DRAKE** stated she has a different take on it. She further stated that she is sympathetic to the needs of the local businessmen but she cannot support the car wash. She commented with regard to the use permit criteria she does not run into a problem until No. 2. The character of the traffic especially at peak hours and when it gets busy could create severe potential for conflict with the car wash at the proposed location. If it could be moved elsewhere on the site that would probably alleviate that concern. She further commented that with regard to Use Permit criterion No. 3, she felt the car wash would create severe conflict with pedestrians using the site. She discussed her concerns regarding the parking lot getting backed up during rush hour. She commented that there is not a way to screen the view of the car wash given the site configuration. She noted that there has been a lot of trouble taken to site and landscape the buildings in this area to create an attractive aesthetic character. She felt the car wash would not be with the quality of character of the other uses in the area. She added she would like to see another solution.

**COMMISSIONER HENRY** stated that she did not envision thousands of cars using this car wash. She further stated this is an impulse car wash and when people come to get gas if the car wash is not busy then people would use it. What that applicant is proposing they have done at several other sites and they understand how the business works. This is a good accessory to their business. They have indicated that they are very concerned about safety. She added she does see the concerns that have been expressed about the driveway off of Shea. She inquired if there is anyway that drive can be moved a little. **MR. KAPANICUS** stated if it were moved farther east it would shorten the deceleration lane and cause a hazard on Shea. **COMMISSIONER HENRY** stated that signage might help. She further stated that she felt the Traffic Department and staff needs to work with the applicant to address these issues. She further stated the Development Review Board would look at this. She stated the applicant has worked very hard on the landscaping and are still working with staff to make this as appealing as possible. There have been no comments from adjacent neighbors that have any problems with this request. **MR. KAPANICUS** stated they would not have an objection to having a sign because they want to keep their customers safe.

**VICE CHAIRMAN LOTZAR** reiterated that he is always predisposed to always let the property owner use the property how they see fit. He stated he would request that the DR Board pay particular attention to the circulation and screening component. He further stated that Commissioner Drake articulated extremely well his concerns but he is hopeful that these issues would be worked out at the Development Review Board level.

**COMMISSIONER OSTERMAN MOVED TO FORWARD CASE 2-UP-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL BASED ON THE**

**FINDINGS THAT IT MEETS ALL OF THE USE PERMIT CRITERIA. SECOND BY COMMISSIONER HENRY.**

**COMMISSIONER HENRY** stated her second of the motion is based on a stipulation that the DR Board studies the vehicular traffic.

**COMMISSIONER OSTERMAN AMENDED HIS MOTION THAT THE DEVELOPMENT REVIEW BOARD STUDY THE CIRCULATION AND WORK WITH THE APPLICANT TO DEVELOP SOME SORT OF IDEA FOR SOME SIGNAGE OR SOME SAFETY SIGN FOR THE PEOPLE COMING OUT OF THE CAR WASH.**

**COMMISSIONER DRAKE** stated she is not in support of this motion. She further stated she is concerned about leaving this up to the DR Board. The applicant has stated very clearly he cannot change the location of the car wash and there is very little wiggle room. She further stated she does not know how the DR Board is going to be able to come up with a solution that would alleviate her concerns, given its limited authority to change the site plan.

**COMMISSIONER NELSEN** stated he would not be in support of this request. He further stated he would concur with Commissioner Drake's comments regarding leaving this up to the DR Board. He commented that he felt the site was well planned when it was first brought through the City but the car wash is an after thought and the different issues cannot be resolved.

**VICE CHAIRMAN LOTZAR** inquired as the motion is presented are they giving more latitude to the DR Board than is customary. **MS. BRONSKI** stated nothing the Commission does affects the jurisdiction of the DR Board. She further stated that she felt this motion was appropriate. She reported that the DR Board does have to work with what has been approved. If this cases does get approved with the car wash the DR Board would not be able to eliminate the car wash. They would have to figure out a way to accommodate it. She added the Commission might want to consider a continuance to allow these issued to be worked through.

**COMMISSIONER DRAKE** stated she would be willing to support a continuance if there is a possible solution to this.

**COMMISSIONER HENRY** stated she would support a continuance to see if this could be redesigned to address the issues regarding the entrance on Shea Boulevard although she had seconded the motion.

**THE MOTION FAILED BY A VOTE OF ONE (1) TO FOUR (4) WITH VICE CHAIRMAN LOTZAR, COMMISSIONER DRAKE, COMMISSIONER NELSEN AND COMMISSIONER HENRY DISSENTING.**

**MR. KAPANICUS** stated if City Council approves this request and it goes before the DR Board and if they cannot work out the circulation problems within the facility they would be willing to bring this back to the Planning Commission for approval.

**VICE CHAIRMAN LOTZAR** reiterated that the Commission is struggling with the circulation and safety issue. They would like to see the property owner use his property as they see fit but they cannot figure out a way today to afford the Applicant that ability without tying the hands of the DR Board.

**MR. STABLEY** stated the Commission cannot tie the hands of the DR Board because they are only allowed to look at things that are under their purview.

**COMMISSIONER NELSEN** inquired when this case would go to City Council. He stated time might be of more importance to the applicant than the Commission's opinion. **MR. STABLEY** stated this case could be sent to the City Council as early as April 16<sup>th</sup>.

**COMMISSIONER DRAKE** stated if this case goes forward to City Council as it has been voted on, she would encourage the applicant to address some of these issues before the case goes before the Council. She further stated staff could work with them in that regard. She noted the City Council would have the benefit of the Commission's thought process and would hopefully be able to get the essence of the "rock and the hard place" aspect of the Commission's discussion tonight.

**COMMISSIONER HENRY** inquired if the motion proceeds to City Council with the recommendation for denial, and site plan revisions are made prior to it going to City Council, would the Planning Commission have to approve the revisions.

**VICE CHAIRMAN LOTZAR** inquired if an additional motion was needed to either vote it down or make a continuance.

**MS. BRONSKI** stated the status of the motion is that it has been denied. It is up to the Commission to decide if they would like to make another motion. She further stated if significant changes are made to the site plan, it is the Council's general practice to send it back to the Planning Commission for another look. If the changes are relatively minor the Council may chose to look at the recommendations and make their decision at that point.

**VICE CHAIRMAN LOTZAR** stated that he hoped at some level the Planning Commission is speeding up the process for the Applicant.

#### **WRITTEN COMMUNICATION**

There was no written communication.

#### **ADJOURNMENT**

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission was adjourned at 7:35 p.m.

Respectfully Submitted,



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